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6 AMERICAN AIRLINES, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 EDWARD E. ANDERSON,

12 Plaintiff,

13 v.

14 AMR The parent of AMERICAN
AIRLINES INC, AMERICAN AIRLINES,
15 and DOES 1 through 5 INCLUSIVE,

16 Defendants.
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Case No. 07-cv-3527 WHA

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AND/OR SUMMARY ADJUDICATION OF
CLAIMS AND OR JUDGMENT ON THE
PLEADINGS**

Date: May 29, 2008
Time: 8:00 a.m.
Ctrm: 9
Judge: William Alsup

1 Defendant American Airlines, Inc. ("American") has moved for judgment on the pleadings
2 and/or, in the alternative, summary judgment and/or summary adjudication of claims brought by
3 Plaintiff Edward E. Anderson ("Plaintiff"). American's motion is premised on the fact that the many
4 of the acts of which he complains were discrete acts that occurred far outside the limitations period,
5 rendering Plaintiff's claims time-barred as to such acts, and as to all of the acts about which he
6 complains because Plaintiff lacks any evidence whatsoever that the alleged adverse actions of which
7 he complains were taken against him for unlawful reasons.

8 Inasmuch as no opposition papers to American's motion have been served on American's
9 counsel or submitted to this Court, Plaintiff has failed to file any opposition to American's Motion
10 for Judgment On The Pleadings and/or, In The Alternative, Summary Judgment and/or Summary
11 Adjudication or otherwise presented to this Court any response that sets out specific facts showing
12 there is a genuine issue for trial. Fed. R. Civ. P. Rule 56(e)(2). Where, as here, Plaintiff will bear
13 the burden of proof at trial on the issues raised by American's motion, Rule 56(e) required him to go
14 beyond his pleadings and, by either affidavit(s), depositions, or answers to discovery on file,
15 demonstrate which specific material facts are in dispute so as to warrant a trial. *Celotex Corp. v.*
16 *Catrett*, 477 U.S. 317, 323–324 (1986); *Federal Ins. Co. v. Burlington Northern & Santa Fe Ry. Co.*,
17 270 F.Supp.2d 1183, 1185 (C.D. Cal. 2003). Plaintiff's failure to meet his burden in response to
18 American's motion requires that judgment on the four causes of action raised in Plaintiff's
19 Complaint, upon each of which American sought judgment on the pleadings and/or, in the
20 alternative, summary judgment and/or summary adjudication, be entered by this Court. As discussed
21 in the following portions of this Reply Memorandum, Plaintiff's counsel was fully aware that
22 Defendant had filed its motion in a timely and proper fashion.

23 Even though Plaintiff has failed to file any opposition or statement of non-opposition to the
24 instant motion, Plaintiff improperly filed with the Court a "Notice of Motion and Motion to Allow
25 Plaintiff to File First Amendment [sic] Complaint," which purports to schedule a hearing on the
26 same date as the hearing on Defendant's Motion. Plaintiff's Motion appears to have been filed by
27 hand on May 13, 2008, and was faxed by Plaintiff's counsel to the undersigned on said date, but then
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1 was apparently electronically filed on May 14, 2008. (Docket # 33).¹ As an initial matter, this
 2 improper motion acknowledges that Defendant's Motion is pending and that Plaintiff is aware of it.
 3 His motion makes the statement that "this motion is scheduled for hearing in a timely fashion at the
 4 same time as Defendant's Motion for Summary Judgment on May 29, 2008." (Pl. Motion, Doc.
 5 # 33, 2:5-6). Plaintiff's motion further states that "the motion is made in a timely manner to be
 6 heard with Defendants' [sic] motion for summary judgment..." (Pl. Motion, Doc. # 33, 5:8-9). In
 7 addition, Plaintiff's counsel's declaration in support of his improper motion makes the same
 8 acknowledgement that he is aware of the Defendant's pending motion. (Affidavit of Frederick C.
 9 Roesti in Support of Motion, Doc. # 34, ¶ 11).²

10 The Court should deny Plaintiff's new motion out of hand because it is in violation of every
 11 deadline imposed by this Court and by Local Rules, as set forth hereafter. However, if the Court
 12 declines to do so, it should give American its full right to brief and oppose this untimely and
 13 improper motion to show that it is: (1) based on a false premise, (2) would greatly expand the factual
 14 and legal issues to be tried, (3) prejudice Defendant, and (4) delay the trial herein.

15 With that alternative request made, Defendant notes that when the parties filed their *Joint*
 16 Statement Pursuant to Federal Rules of Civil Procedure 26(f) (Doc. # 13), both sides stated they did
 17 not believe any amendments to the pleading would be made. (Doc. # 13, 4:1-2). When the Court
 18 issued its Case Management Conference Order herein, Doc. # 16, the Court ordered that any leave to
 19 amend the pleadings must be sought by October 31, 2007. (Doc. # 16, ¶ 2). The Court's Case
 20 Management Conference Order required all fact discovery to be completed by March 7, 2007. (Doc.
 21 # 16, ¶ 4).³ The Case Management Conference Order further required all dispositive motions to be

22 ¹ Electronic notice of the filing of said document was emailed to counsel on May 14, 2008.

23 ² Plaintiff's counsel faxed a letter to the undersigned's associate in a totally different office on May 13 asking for a copy
 24 of Defendant's motion to be faxed to him claiming to be "internet illiterate." Defendant did fax a copy of the moving
 25 papers to plaintiff's counsel but submits that counsel's request is a ruse. This matter has long been designated as an
 26 electronic filing case and counsel is registered with the court's electronic filing program. In addition, a review of the
 27 court's records on PACER shows that he has appeared in this court in 11 different matters as counsel of record, including
 28 one in which he also represented this Plaintiff (Anderson v. Ogden Aviation Svc. et. al, # 96-cv-00962-SI). He also
 states in his Affidavit that he has practiced employment law for 30 years. (Roesti Affidavit, Doc. # 34, ¶ 14). He is fully
 familiar with federal court practice, especially in this District.

³ Plaintiff's motion makes the false statement that "in the present case, Plaintiff and Defendants are still in the discovery
 phase of the case, although Defendant has filed a motion for summary judgment." Thus, he again acknowledges
 awareness of the pendency of the instant motion *and* falsely states that the parties are still within the period to conduct
 discovery.

1 filed by April 24, 2008. (Doc. # 16, ¶ 9). The Local Rules of this Court also require any party
 2 seeking relief from the Court's Case Management Conference Order to first confer with opposing
 3 counsel concerning the desired change and file certain pleadings regarding these efforts. (Local
 4 Rule 16-2(d)). Plaintiff has done none of this. Nor has Plaintiff come remotely close to meeting the
 5 standard he must meet in order to obtain such relief from the Court's Case Management Conference
 6 Order. Once such scheduling order is made, no later amendment of pleadings is permitted unless the
 7 court first modifies the scheduling order to permit such amendment. To obtain such modification,
 8 "good cause" must be shown (see FRCP 16(b)(4)). *Johnson v. Mammoth Recreations, Inc.* 975 F2d
 9 604, 609 (9th Cir. 1992); *Hargett v. Valley Fed'l Sav. Bank* 60 F3d 754, 761 (11th Cir. 1995)—
 10 "compelling reasons" why amendment could not have been presented earlier; *S & W Enterprises,*
 11 *L.L.C. v. SouthTrust Bank of Alabama, NA* 315 F3d 533, 536 (5th Cir. 2003)

12 Finally, Local Rule 7-2 requires all motions to be made on at least 35 days' notice, except
 13 under circumstances which do not pertain hereto. Plaintiff's motion, which was filed either on
 14 May 13 or May 14, 2008, clearly was not filed 35 days in advance of Plaintiff's intended motion
 15 hearing date of May 29, 2008. In a nutshell then, Plaintiff has violated every possible deadline and
 16 timing rule under which he needed to seek leave to amend his pleading from the Court.⁴

17 Accordingly, American respectfully requests that this Court grant its Motion for Judgment
 18 On The Pleadings and/or, In The Alternative, Summary Judgment and/or Summary Adjudication in
 19 its entirety.

20 Dated: May 15, 2008

Respectfully submitted,

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 22 /s/Kenneth R. O'Brien
 KENNETH R. O'BRIEN
 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Defendant
 AMERICAN AIRLINES, INC.

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 28 ⁴ This Court's Case Management Conference Order clearly states that no delays in trial preparation or trial because of
 ADR will be countenanced. (Doc. # 13, ¶ 13.)